authority conferred by the power, it is necessary to shew that on a fair construction of the whole instrument the authority in question is to be found within the four corners of the instrument, either in express terms or by necessary implication."

A number of authorities were cited to define the meaning of the word "securities". I shall refer to two only. In *Singer* v. *Williams* (2) Viscount Cave said:—

"My Lords, the normal meaning of the word 'securities' is not open to doubt. The word denotes a debt or claim the payment of which is in some way secured. The security would generally consist of a right to resort to some fund or property for payment; but I am not prepared to say that other forms of security (such as personal guarantee) are excluded."

In *Grimwade* v. *Mutual Society* (3) Chitty J. referred to "personal securities". He said:—

"The term personal security is now well understood. . . . . It includes every case where nothing more is obtained than the personal liability of the borrower, or of the borrower and sureties. It is the same thing as a loan on personal credit only."

Mr. Arulanandom, on the other hand, is of the opinion that the power to borrow vested by clause 12 is wide enough to include a loan contracted upon the personal guarantee of the donor. He contends that as the general powers conferred by the power of attorney in question are wide, clause 12 should also be construed as widely as possible. He further contends that the widest power to borrow which could be conferred on an attorney is to authorise him to borrow on the security of the donor's property and therefore the power to borrow without security would be implied in the power vested by clause 12.

I am unable to agree with this contention. I should rather think (although I am not deciding this point) that it would be more logical to infer from a general power to borrow that the attorney could pledge the donor's property than the reverse proposition. Besides, there would be a limit to the amount which could be borrowed on the security of property, whereas in case of personal guarantee, an attorney could pledge the credit of the donor far beyond his means to repay.

The question to decide in this case is whether the words "upon any security real or personal" in clause 12 would include borrowing on the personal guarantee of the donor. Now, quite apart from the word "personal" in clause 12, the whole tenor of the clause points to an intention on the part of the donor to limit the power to borrowing on the security of land or goods. Therefore, in my opinion, the word "personal" should be interpreted to fit in with the general intention of the donor.

It is manifestly clear that the power of attorney, which is a printed form, was drafted by a legal draftsman. "Real" and "Personal" are common law distinctions in regard to property, and therefore the power to borrow conferred by clause 12 must, in my opinion, be read to mean power to borrow on the security of real or personal property. I hold that Karuppiah in borrowing the money on a personal guarantee exceeded the authority conferred upon him.

The suit is therefore dismissed with costs.

Suit dismissed.

Solicitors: *Arulanandon & Co.; Dharmananda & Co.*

GRANT ADVERTISING INTERNATIONAL INC. & ANOR. v. GLAZE

[O.C.J. (Raja Azlan Shah J.) August 10, 1967]
[K.L. — Civil Suit No. 83 of 1966]

Practice and Procedure — Writ specially indorsed — Amendment — Application for, before date of trial — Introducing new cause of action and pleading fraud — Principle and practice on such amendment — Whether there can be a conversion from a specially indorsed writ to a generally indorsed writ — R.S.C., 1957, O. 3 r. 6.

This action commenced by specially indorsed writ being contested, was set down for trial. Before date for trial, plaintiffs applied for amendment of their pleadings. The amendment sought (a) an increase of the amount from the figure as originally claimed (b) to introduce a new cause of action in tort in addition to their original cause of action and fraud for the first time. The question to be answered was: whether there can be a conversion from a specially indorsed writ to a generally indorsed writ.

Held: (1) although the plaintiffs were seeking to introduce a new cause of action in tort in addition to their original cause of action, the new cause of action did not turn a suit of one character into a suit of another and inconsistent character. It merely added a new cause of action which concerned the same parties and which involved substantially the same facts and arose out of the same transaction *inter partes;*

(2) the plaintiffs must be allowed the conversion of the writ with the necessary indorsement.

Cases referred to:—

(1) *Looi Guan Kway* v. *Low Lean Bok* [1938] M.L.J. 35.

(2) *Kurtz* v. *Spence* [1887] 36 Ch. D. 770, 773.

(3) *Paxton* v. *Baird* [1893] 1 Q.B. 139.

CIVIL SUIT.

H. Elias for the plaintiffs.

Kok Wee Kiat for the defendant.

Raja Azlan Shah J.: On 27th January, 1966, the plaintiffs commenced an action against the defendant by way of specially indorsed writ for a liquidated sum of $33,362.89, particulars whereof are set out in the annexure thereto. The defendant on the other hand only admits owing them a sum of $5,763.30. The action was set down for hearing on 29th June, 1967. However, on 22nd May, 1967, the plaintiffs applied by summons in chambers which was subsequently adjourned to open court for amendment of their

pleadings. The particulars they sought to amend, *inter alia,* were for the sum of $33,362.89 to read $34,408.89, damages for breach of contract and/or the tort of conversion, and fraud. As the plaintiffs have pleaded fraud for the first time, they must as a matter of necessity apply for a conversion of the specially indorsed writ to a general writ. In this connection I need only refer to the relevant portion of O. 3 r. 6 of the Rules of the Supreme Court, 1957, which reads:—

"6. (1) In any action other than one which includes:
(a) . . . .
(b) a claim by the plaintiff based on an allegation of fraud,
the writ of summons may, at the option of the plaintiff, be specially indorsed with or accompanied by a statement of his claim".

Now, as a general rule either party is allowed to make any such amendment as is reasonably necessary for the due presentation of his case, on payment of the costs of and occasioned by the amendment, provided there has been no undue delay on his part, and provided also that the amendment will not injure or affect any vested rights of his opponent. Where the amendment is necessary to enable justice to be done between the parties, it will be allowed on terms even at a late stage. If the application be made *mala fide,* or if the proposed amendment will cause undue delay, or will in any other way unfairly prejudice the other party, or is irrelevant or useless, or merely raise a technical point, leave to amend will be rejected. There are numerous decided cases on the point but I need only quote the local case of *Looi Guan Kway* v. *Low Lean Bok* [1] where, upon an application by the plaintiff to amend the plaint, Aitken J., after a study of the relevant authorities enunciated three subsidiary principles for the guidance of the court:—

1. There is *bona fides* on the part of the applicant;
2. They cause no prejudice to the other side which cannot be compensated by costs; and
3. They are not such as to turn a suit of one character into a suit of another and inconsistent character.

Apart from what would appear to be some mathematical miscalculation as to the sum owing by the defendant which was discovered by the plaintiffs subsequent to the filing of the writ, I am not unmindful of the fact that the plaintiffs are seeking to introduce a new cause of action in tort in addition to their original cause of action. I am satisfied that the new cause of action does not turn a suit of one character into a suit of another and inconsistent character. It merely adds a new cause of action which concerns the same parties and which involves substantially the same facts and arises, as it seems to me, out of the same transaction *inter partes.* As was stated by Cotton L.J. in the case of *Kurtz* v. *Spence*:— [2]

"When by an amendment the real substanstial question can be raised between the parties, ought we to refuse to allow the amendment, having regard to the rule, and to the direction in the Judicature Act that as far as possible in any proceeding all questions between the parties shall be decided so as to prevent a multiplicity of actions?"

I can see no prejudice caused to the defendant if the application is allowed, as he will in turn be given leave to amend his defence if he so chooses: nor can I find any *mala fides* on the part of the plaintiffs in wanting to amend their pleadings at this stage.

The only substantial question to be answered is an extremely technical one and it has never yet come for decision before our courts; whether there can be a conversion from a specially indorsed writ to a generally indorsed writ. However, there is authority for the conversion from a general to a specially indorsed writ, and this is found in the case of *Paxton* v. *Baird.* [3] I can see no reason why the converse should not apply. If I allow the plaintiffs the amendment to the statement of claim, it follows, in my view, under O. 3 r. 6 that I must allow them the conversion of the writ with the necessary indorsement. I hereby allow conversion of the writ which has to be duly indorsed. The statement of claim originally indorsed in the writ and the amendment asked for will be treated as the statement of claim in the present case. The plaintiffs are to serve the amended writ on the defendant and there will be liberty to the defendant to amend his defence within 21 days from the date of service. Costs to the defendant in any event as occasioned by this amendment.

Application allowed.

Solicitors: *Shearn, Delamore & Co.; Mah & Kok.*

WONG SEE HAR v. PUBLIC PROSECUTOR

[A.Cr.J. (Azmi C.J. (Malaya)) August 14, 1967]
[K.L. — Criminal Appeal No. 60 of 1967]

Penal Code, s. 348 — Extortion — Evidence that accused is member of secret society — When admissible in charge of extortion — Prosecution not bound to produce all available eye witnesses — Evidence Ordinance, 1950, ss. 54 and 114.

The appellant who was convicted of extortion appealed on two grounds: (a) admission of evidence that he was a member of a secret society previously prejudiced his trial; (b) failure of the prosecution to produce a possible eye witness raised a presumption unfavourable to the prosecution under section 114 of the Evidence Ordinance.

Held: (1) it was part of the threat that the appellant was a member of a secret society and therefore, in